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ALEXANDRIA, VA 22313-1450  
www.uspto.gov

Paper No. 7

MELVIN K. SILVERMAN  
SUITE 500  
500 WEST CYPRESS CREEK ROAD  
FORT LAUDERDALE FL 33309

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DEC 30 2003

**OFFICE OF PETITIONS**

In re Application of  
Montoya  
Application No. 09/954,970  
Filed: September 19, 2001  
Attorney Docket No. 1187.07  
For: DUAL PIZZA PIE CONTAINER SYSTEM

DECISION DISMISSING  
PETITION TO WITHDRAW OF  
HOLDING OF ABANDONMENT

This is a decision on the paper entitled, "RESPONSE TO NOTICE OF ABANDONMENT," filed December 9, 2003. The paper will be treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

This application was held abandoned for failure to timely submit a reply to the Notice to File Missing Parts of Nonprovisional Application, mailed October 19, 2001, which required petitioner to submit the statutory basic filing fee, a late filing fee, and an abstract.

The Office contended that the application became abandoned on December 20, 2001 because the Office claimed it did not receive a reply. A Notice of Abandonment was mailed on November 18, 2003.

Petitioner asserts that a timely response to the October 19, 2001 Notice to File Missing Parts was deposited as first class mail on February 19, 2002. Petitioner has provided a copy of the original cover letter which states that a check in the amount of \$615, comprising a two month extension of time, a small entity basic filing fee, and a small entity late filing fee surcharge was enclosed. The cover letter has a valid certificate of mailing dated February 19, 2002 affixed thereto. In addition, petitioner has provided a copy of petitioner's itemized postcard receipt showing an Office of Initial Patent Examination stamp citing March 6, 2002 as the date of receipt. The postcard lists that the filing included a copy of the October 19, 2001 Notice, a small entity declaration, and check no. 3685 for \$615.

The return postcard constitutes *prima facie* evidence that the check was mailed on certificate of mailing date February 19, 2002 and received in the Office on March 6, 2002. MPEP 503. A review of the application file reveals the original cover letter is present and Office financial records show that the check for \$615 was negotiated. Thus, the Office did receive a timely reply and The Notice of Abandonment was incorrect to state that no reply was received.

Unfortunately, petitioner did not submit a **complete** reply. The October 19, 2001 Notice to File Missing Parts required petitioner to timely submit fees and *an abstract* to avoid abandonment. The Office did not receive an abstract and there is no mention of an abstract on the March 6, 2002

postcard receipt.

Therefore, the application became abandoned on February 20, 2002 for failure to submit an abstract within the 2 month extended period for reply.

Accordingly, the petition is **DISMISSED**.

Petitioner must file a petition to revive under 37 CFR 1.137(a) or (b) and pay the proper petition fee. Unless petitioner can demonstrate that petitioner was "unavoidably" prevented from submitting a proper reply to the October 19, 2001 Notice, a petition under 37 CFR 1.137(b) is suggested.

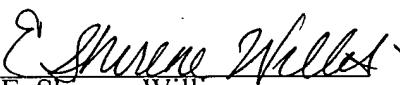
Further correspondence with respect to this matter should be addressed as follows:

**By mail:** Mail Stop PETITION  
Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450  
ATTN: E. Shirene Willis

**By hand:** Crystal Plaza 1 Lobby  
2011 South Clark Place  
Room 1B03  
Arlington, VA 22202  
ATTN: E. Shirene Willis

**By FAX:** (703) 872-9306  
ATTN: Office of Petitions -- E. Shirene Willis

Any inquiries pertaining to this matter may be directed to the undersigned at (703) 308-6712.

  
E. Shirene Willis  
Senior Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy